

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

MARK SMITH, #1042696,

Petitioner,

v.

ACTION NO. 2:17cv460

HAROLD W. CLARKE,
Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

Petitioner, Mark Smith ("Smith"), a Virginia inmate, has submitted a *pro se* petition, pursuant to 28 U.S.C. § 2254. ECF No. 1. Smith alleges that his constitutional rights were violated when he was convicted in the Circuit Court for Accomack County on June 20, 2013 and sentenced to 23 years in prison for second degree murder, use of a firearm in the commission of a felony, and discharging a firearm. *Id.* at 1.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report and Recommendation, filed May 18, 2018, recommends that the respondent's motion to dismiss, ECF No. 10, be granted,

and Smith's federal petition be dismissed with prejudice. ECF No. 13.

Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the Report and Recommendation and the time for filing objections has expired. The Court does hereby adopt and approve the findings and recommendation set forth in the Report and Recommendation. It is, therefore, **ORDERED** that respondent's motion to dismiss, ECF No. 10, is **GRANTED**, and the petition for a writ of habeas corpus, ECF No. 1, is **DENIED** and **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that judgment be entered in favor of respondent.

Smith has failed to demonstrate "a substantial showing of the denial of a constitutional right," and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

Smith is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to Smith and counsel of record for respondent.

A handwritten signature in black ink, appearing to read 'MSD', is written over a horizontal line.

Mark S. Davis
United States District Judge

Mark S. Davis
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
July 5, 2018